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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

December 8, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW - Room 222
Washington, DC 20554

Re: CC Docket No. 95-72, End User Common Line Charges,
BOC Non-Traffic Sensitive Data Submissions

Dear Mr. Caton:

MCI is writing in response to certain ex parte filings from BellSouth¹ and Southwestern Bell². Both Bell Operating Companies (BOCs) decided to ignore the Commission's express request to provide non-traffic sensitive (NTS) cost data for ISDN on the public record -- to allow "[i]nterested partie[s]... to file comments on the information submitted."³ These refusals to cooperate with the Commission are examples of increasing disregard by BOCs for Commission guidelines. Equally egregious, and plainly untrue, is the BOC implied claim that they may elect to ignore the Commission's request due to competition. Neither of the BOCs has demonstrated the level of substantial competitive harm, in the ISDN market, that must be shown before they receive a grant of confidential cover.

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- ¹ Letter from W. W. Jordan, Executive Director - Federal Regulatory, BellSouth, to Mr. William F. Caton, Secretary, Federal Communications Commission, regarding CC Docket No. 95-72, filed November 9, 1995 (BellSouth Letter).
- ² Letter from Paul Walters, Attorney, Southwestern Bell Telephone, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, regarding CC Docket No. 95-72, End User Common Line Charges NPRM, filed November 9, 1995 (Southwestern Bell Letter).
- ³ Pleading Cycle Established for Comments on Non-Traffic Sensitive Cost Data Submitted by the BOCs, Docket No. 95-72, DA 95-2089, released October 2, 1995. It is axiomatic that the BOC cost information must be made available to the public, otherwise the interested parties could not comment on that information.

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BellSouth's letter is noticeably void of objective proof of any competition -- at all -- upon which to base its refusal to comply with the Commission. It alludes to the prospect of competition from interexchange carriers, but fails to provide any tangible measure of the [phantom] ISDN competition it can or will face. BellSouth cannot objectively quantify its ISDN competition because the competitors do not exist.

ISDN is first and foremost a local service and local access facility. It is beyond question that BellSouth, and other BOCs, control monopoly share of the local service/access market and will continue to do so for some time to come. When an IXC sells interexchange ISDN to an end user that end user must almost always seek ISDN access from the BOC. Contrary to BellSouth's contention, interexchange ISDN services primarily complement BOC ISDN. IXC ISDN sales stimulate BOC access and local service sales because the local origination and termination are necessary to give the customer end-to-end ISDN connectivity. The absence of evidence showing competitive harm, and the market realities of BellSouth's access and local service bottleneck, indicate BellSouth's arguments are disingenuous. The Commission should not allow BOCs to use unsubstantiated claims of competition as a means to excuse their disregard for FCC information requests on the public record.

Southwestern Bell, using essentially the same competitive claim as BellSouth to explain its failure to comply with the Commission's request for public NTS data, did go further by providing documents purporting to corroborate its concerns. However, a review of those documents finds that they are long on volume but short on relevant proof of actual ISDN competition.⁴

⁴ MCI reviewed the documents and two facts are salient. First, there is almost a total absence of any proof that the companies Southwestern Bell names actually provide ISDN -- based either upon the service descriptions in the documents, or even the simple proof that the word "ISDN" is not mentioned as a service being provided by these alleged competitors. See e.g., Southwestern Bell Letter, Attachment VI, Tab 7, Houston Market Area Microwave Users, Grouped by Type, page 58 (licensed to the City of Houston Fire Department for fire alarm use); and page 61, San Antonio SMSA Limited Partnership (a cellular license in which an SBC subsidiary, SBMS, holds a controlling interest). Second, there is no proof that these companies have taken any portion of Southwestern Bell's ISDN market

Southwestern Bell should be very familiar with the standard of substantial competitive harm required by the Commission before a Freedom of Information (FOIA) exemption is granted, since the Commission recently issued a number of orders rejecting various Southwestern Bell claims for confidential cover.⁵ Particularly relevant was the Commission's SWBT Confidential Cover Rejection Letter which denied Southwestern Bell's attempt to obtain FOIA Exemption 4.⁶ In that decision, the Common Carrier Bureau found that requests for FOIA exemptions would be rejected if they were based on unsubstantiated claims of competitive harm or failed, due to an absence of specific examples, to link the competitive harm to the release of the information to be withheld from the public record.

When the Commission's decision is applied to the circumstances discussed in Southwestern Bell's letter, the BOC fails to substantiate any ISDN competition and there is no linkage between releasing its NTS data on the public record and substantial competitive harm. Based on Commission precedent Southwestern Bell cannot use illusory competition to avoid providing data on the public record. The Commission should not allow Southwestern Bell to use that pretext as an excuse in this proceeding.

share or that they are capable of doing so. See e.g., Attachment VII, "Future Competitors for ISDN Type Services" (including four companies/satellite systems under "fixed satellite service providers" that have nothing more than pending applications before the FCC).

⁵ See e.g., Letter from Regina M. Keeney, Chief, Common Carrier Bureau, to Thomas A. Pajda, Esquire, Southwestern Bell Telephone Company, DA 95-2395, dated November 28, 1995 (RE: Southwestern Bell Transmittal Nos. 2498 and 2501) (SWBT Confidential Cover Rejection Letter).

⁶ Id., pp. 2-3.

MCI asks the Commission to reject BOC attempts to undercut the Commission's clear request for public deliberation in this ISDN proceeding. If BellSouth and Southwestern Bell do not want to abide by the Commission's guidelines they should not be allowed to participate. Most important, they should not be granted confidential cover for NTS cost data behind unsubstantiated claims of competition.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christopher Bennett".

Christopher Bennett
Senior Staff Member
MCI Telecommunications Corporation

cc: L. Gelb, FCC
W. W. Jordan, BellSouth
R. M. Sbaratta, BellSouth
P. Walters, Southwestern Bell